

HOUSE BILL 1186

By Jones S

AN ACT to amend Tennessee Code Annotated, Title 49,
Chapter 10, relative to special education services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the Special Education Seclusion and Restraint Modernization and Positive Behavioral Supports Act. The purpose of this statute is:

- (1) To ensure that every student receiving special education services is free from the unreasonable, unsafe and unwarranted use of restraint practices;
- (2) To encourage the use of positive behavioral interventions and support methods in schools; and
- (3) To develop a well-trained staff in order to reduce dependence on seclusion and restraint practices.

SECTION 2. As used in this act, unless the context otherwise requires:

- (1) "Chemical restraint" means the administration of medication for the purpose of limiting a student's freedom of movement or action.
- (2) "Extended restraint" means a physical restraint, the duration of which is more than five minutes, or the use of restraint more than once in a school day.
- (3) "Human rights committee" means a committee each school district board shall establish that reviews documentation of the use of seclusion rooms and restraint which is composed of family members of students with disabilities who receive special education services, advocacy representatives and school district employees.
- (4) "Locked seclusion room" means a locked box, locked closet, locked room or any other locked structure or any other space with a physical impediment to exit.

(5) "Mechanical restraint" means the use of any device or object, including, but not limited to:

- (1) Tape;
- (2) Blankets;
- (3) Tiedowns; and

(4) Body carriers that limit a person's body movement, except that protective or stabilizing devices ordered by a physician shall not be considered to be a mechanical restraint when used in the manner in which the device is prescribed;

(6) "Physical restraint" means the use of bodily force to limit a student's freedom of movement or action, except that consensual, solicited or unintentional touching shall not be construed to be physical restraints;

(7) "Positive behavior interventions and supports" means an approach to preventing and responding to problem behavior that:

- (1) Is proactive and instructional, rather than reactive;
- (2) Can operate on each of the following three (3) levels:
 - (A) Individual;
 - (B) Group or classroom;
 - (C) And the whole school;
- (3) Includes a system of continual data collection;
- (4) Utilizes data-based decision-making; and
- (5) Applies research-validated positive behavioral interventions;

(8) "Restraint" means any physical method of restricting a person's freedom of movement, physical activity or normal access to the person's body.

(9) "School day" means any day or partial day that students are in attendance at an accredited education program for instructional purposes.

(10) "School employees" means teachers, administrators and support staff employed by a school or special education cooperative.

(11) "Seclusion room" means a room that is unlocked and monitored but is designed to isolate a person and is at least 50 square feet, free of any condition that could be a danger to the student, well ventilated, temperature controlled and sufficiently lighted; and

(12) "Timeout" means a behavior management technique that involves removing a student from sources of reinforcement following an inappropriate behavior for a limited period of time that does not involve the use of a seclusion room.

SECTION 3.

(a) Every student who receives special education services has the right to be free from unnecessary seclusion or restraint.

(b) No student shall at any time be placed in a locked seclusion room.

(c) The use of a seclusion room is permitted only if:

(1) The student poses an imminent risk of substantial physical harm to self or others;

(2) There is no medical contraindication for its use;

(3) Staff using seclusion has been trained to safely implement the intervention;

(4) The space is unlocked and there is no physical impediment to the exit of the room;

(5) School staff is in visual contact with the student at all times, not to exceed a distance of two (2) feet from the room;

(6) The duration is limited to one (1) minute or less per year of age of the student. Seclusion shall not be used with preschool students. Durations greater than this amount shall be considered extended seclusion and are permissible only by following the requirements of this act;

(7) Prior written parental consent has been obtained including the specific behaviors that will result in the use of a seclusion room; and

(8) Use of a seclusion room is expressly included in the child's Individualized Education Program (IEP).

(d)

(1) The use of chemical restraints is prohibited in public education programs.

(2) The use of mechanical restraints is prohibited in public education programs.

(3) The use of physical restraint is limited to times when:

(A) The student poses an imminent risk of substantial physical harm to self or others;

(B) There is no medical contraindication for its use;

(C) The staff applying restraint has been trained pursuant to Section 7 to safely implement the intervention;

(D) A person administering a physical restraint uses the least amount of force necessary to protect the student or others from physical injury or harm. It must be performed in a manner that is safe, proportionate, appropriate to the severity of the behavior, and the student's chronological and developmental age, size, gender, physical,

medical, psychiatric condition and personal history including any history of emotional trauma, physical abuse or sexual abuse;

(E) Supporting documentation is completed within twenty-four (24) hours;

(F) Prior written informed parental consent has been obtained including the specific behaviors that will result in use of restraint; and

(G) Use of restraint is on the student's behavior intervention plan, noting specific behaviors that will warrant the use of the seclusion room and it is incorporated into the individualized education plan (IEP).

(4) Physical restraint is prohibited as a means of punishment or as a response to:

(A) Insubstantial property destruction;

(B) Disruption of school order;

(C) A student's refusal to comply with a school rule or staff directive; or

(D) Verbal threats that do not constitute a threat of imminent, serious physical harm.

(5) This act is not intended to forbid the following:

(A) Actions undertaken to break up a fight;

(B) Actions undertaken to take a weapon away from a student;

(C) The brief holding by an adult in order to calm or comfort;

(D) The minimum contact necessary to physically escort a student from one area to another;

(E) Assisting a student in completing a task or response if the student does not resist, or resistance is minimal in intensity or duration; or

(F) Holding a student for a brief time in order to prevent any impulsive behavior that threatens the student's immediate safety.

SECTION 4.

(a) Only school personnel who have received training pursuant to Section 7 may administer physical restraint on students.

(b) The administration of a restraint shall be witnessed by at least one adult who does not participate in the restraint.

(c) This section does not preclude school staff from using reasonable force to protect students, other persons or themselves from assault or imminent, serious, physical harm.

(d) A person administering physical restraint shall use the safest method available and appropriate to the situation subject to the safety requirements set forth in this statute.

(e) No restraint shall be administered in such a way that a student is prevented from breathing or speaking.

(f) During the administration of the restraint, a staff member who is not involved in the restraint shall monitor the physical status of the student and teacher, including skin color and respiration.

(g) The restraint shall be immediately released upon a determination by a staff member that the student is no longer likely to cause imminent physical harm to self or others.

(h) Restraint shall be administered in a manner that prevents or minimizes physical harm. If, at any time, the student demonstrates significant physical distress, the student shall be released from the restraint immediately, and medical assistance shall be sought.

SECTION 5.

(a) Circumstances under which a physical restraint or seclusion was used must be reported to the parent or responsible adult. Program staff shall immediately report the use of any physical restraint or seclusion to the building administrator or designee.

(b) The building administrator, or designee, shall immediately contact the student's parents or guardians to inform them of the intervention and mail written follow-up notification that includes a specific person to contact for more details within twenty-four (24) hours.

(c) A form documenting the use of a seclusion room or physical restraint must be completed and sent to the building administrator, the parents and the human rights committee within twenty-four (24) hours of each incident. The documentation shall include:

(1) The names and job titles of the staff who administered the restraint, any witnesses, and the name of the administrator or designee who was informed following the seclusion or restraint, and time contacted;

(2) The date of the seclusion or restraint, the time of initiation, ending time, duration and location of the intervention;

(3) A description of the antecedents that immediately preceded the use of seclusion or restraint and the specific behavior being addressed;

(4) The alternative methods used to de-escalate the situation prior to the use of the seclusion or restraint;

(5) How the restraint ended, including physical or mental injuries, to the student, staff or both, and any medical care provided;

(6) Suggestions for strategies to be used in future incidents to avoid the use of seclusion and restraint;

- (7) The signature of the person initiating the action and a witness of the intervention technique used;
- (8) The date and time that parental notification took place;
- (9) Information regarding future opportunities for the student's parents to discuss with school officials the administration of the restraint or seclusion; and
- (10) The names and phone numbers of the Disability Law and Advocacy Center, Support and Training for Exceptional Children (STEP), The Arc of Tennessee and Tennessee Voices for Children.

SECTION 6. On a quarterly basis, the department of education shall collect and compile the data regarding the use of seclusion and restraint and report the data to the state advisory council for the education of students with disabilities established pursuant to § 49-10-105. This information must also be made readily available to the public. The council shall use this information to report to the state board of education with recommendation on systemic change needed to reduce the use of seclusion and restraint in public education programs. The state board of education shall use these recommendations as well as the data, documentation and reports to annually recommend to the legislature strategies or policies to reduce or eliminate the use of seclusion and restraint in schools. The data and documentation shall include at least:

- (1) The number of incidents involving the use of these interventions;
- (2) The location and duration of each incident, identifying both specific schools and districts;
- (3) Demographic information to determine whether disproportionate use of these interventions exists;
- (4) Any injuries or property damage that occurred; and
- (5) The timeliness of parental notification and administrative review.

SECTION 7.

(a) Before using restraint and seclusion, school staff must receive specialized individual training such as the mandt system developed by David Mandt and Associates or nonviolent crisis intervention developed by the crisis prevention institute, and demonstrate competency. This training shall include, but is not limited to:

- (1) An understanding of the basis for rules governing seclusion and restraint;
- (2) The safe administration of seclusion and restraint practices;
- (3) Addressing physical safety issues that may arise during the administration of emergency measures;
- (4) Identifying the effects of physical restraint on the person restrained, monitoring physical signs of distress, and obtaining medical assistance;
- (5) Simulated experience of administering and receiving physical restraint and its effects on the person restrained;
- (6) Instruction in documenting and reporting requirements; and
- (7) The proper use of positive behavior supports, techniques and strategies designed to minimize and prevent the need for usage of restraint and seclusion.

(b) Only school personnel who have received this training shall administer physical restraint or use seclusion rooms with students.

SECTION 8.

(a) It shall be the policy of the state of Tennessee that school districts are encouraged to implement positive behavioral interventions and supports and other evidence-based practices to address the needs of students who receive special education services.

(b) The state board of education shall promulgate rules and regulations that provide for all items addressed in this act that are based on the principles of positive behavioral interventions and supports (PBIS).

(c) The state board of education shall offer assistance to local boards of education with implementing schoolwide plans. An effective schoolwide PBIS plan:

(1) Is developed in cooperation with administrators, teachers, and parents, and at their discretion, students;

(2) Establishes a behavior support team to direct the implementation of the PBIS plan at each school and that the team include parents of students at the school as well as school employees as team members;

(3) Provides for an initial assessment of the status of behavior and discipline in the school;

(4) Clearly defines short and long-term goals for improving school behavior and discipline based on objective criteria;

(5) Establishes implementation procedures based on the goals of the plan and the status of behavior and discipline as initially assessed;

(6) Includes a timeline for comprehensive training of a sufficient number of school employees, beginning with members of the school-wide behavior support team, in the use of PBIS by recognized instructors in PBIS; and

(7) Includes the selection of a data system that allows continual and efficient monitoring and evaluation of the effectiveness of the implementation of the school-wide system of discipline.

SECTION 9.

(a) Nothing in this act shall be construed to limit the protection afforded publicly funded students under other state or federal laws.

(b) If anything in this act shall be deemed unconstitutional, the unconstitutional section shall be severed from the rest of the statute without affecting the constitutionality of the act as a whole.

(c) Authority to implement this statute is vested in the state board of education. Authority to implement other rules and regulations and policies that fall within the confines of this act is also vested in the state board of education.

SECTION 10. This act shall take effect upon becoming a law for the purposes of rulemaking, the public welfare requiring it. For all other purposes this act shall take effect July 1, 2007, the public welfare requiring it.